GOH KOON SUAN

v.

HENG GEK KIAU

HIGH COURT MALAYA, JOHOR BAHRU
JAMES FOONG JC
[CIVIL SUIT NO. 22-286 OF 1990]
31 OCTOBER 1991

CIVIL PROCEDURE: *Jurisdiction - Whether the High Court is the proper forum as the court of first instance - To hear an application under s. 3(2) of the Married Women and Children (Maintenance) Act 1950 - The court of first instance must be the Subordinate Court O. 84 rr. 1, 3 - The ambit of such proceedings under the Guardianship of Infant Act 1961.*

This is an application for the maintenance of a child born as the result of cohabitation between the plaintiff and the defendant. The said application arose from a counterclaim by the defendant for maintenance of the child in an action under a writ by the plaintiff against the defendant for a certain property which the plaintiff alleged to have purchased in the name of the defendant when both of them were cohabiting.

The matter before the Court was whether in the first place the High Court had the jurisdiction to hear such an application as the Court of first instance. Also whether s. 9 of the Married Women and Children (Maintenance) Act and O. 84 r. 3 of RHC would be in-point for the said application to be heard by the High Court.

Held:

[1] Though s. 9 does provide the High Court with powers to determine matters arising from the Married Women and Children (Maintenance) Act 1950 (Revised 1981), its powers only relate to matters referred to it by the Subordinate Courts under s. 8. Section 9 must be read in connection with and in consequent to s. 8 of the Act, and not on its own to imply that the High Court can hear such matters in the first instance. Therefore, the Court of first instance for relief sought under the Act must be the Subordinate Court.

[2] Order 84 r. 3 though provides for applications as to guardianship, maintenance or advancement of infants, may be disposed of in the chambers of the High Court, such applications are in reference to applications made under the Guardianship of Infant Act 1961. This is so for the reason that O. 84 r. 1 clearly defines the ambit of these proceedings in relation to Guardianship of Infants Act 1961. Therefore the "applications" provided for under r. 3 must be confined to applications made under the Guardianship of Infants Act 1961 and not otherwise. Certainly it has no application to proceedings commenced under the Married Women and Children (Maintenance) Act 1950.

[Defendant's application dismissed with costs.]

Legislation referred to:

Rules of the High Court 1980, O. 84 rr. 1, 3

For the plaintiff - Ng Chew Hor; M/s. Leng & Co.
For the defendant - Ho Thian Cheh; M/s. Ho Thian Cheh & Co.

JUDGMENT

James Foong JC:

This is an application by way of summons-in-chambers (encl. 14) for the maintenance of a child born as the result of cohabitation between the plaintiff and the defendant.

This application arose from a counterclaim by the defendant, for maintenance of the said child in an action under a writ of summons, by the plaintiff against the defendant, for a certain property which the plaintiff alleged, to have purchased in the name of the defendant when both of them were cohabiting together.

At the hearing of this application, the plaintiff's solicitors took a preliminary objection that this claim should not be heard by the High Court as a Court of first instance. The learned Counsel cited the Married Women and Children (Maintenance) Act 1950 (Revised 1981), (hereinafter shall be referred to as the said Act) which provides that, maintenance of such nature shall be within the confines of the Subordinate Courts.

The learned Counsel for the defendant disagreed and, contended that the High Court has jurisdiction to entertain such an application. He supported his case by citing s. 9 of the said Act and O. 84 r. 3 of the Rules of the High Court.

After considering the submissions of both parties, this Court finds that the defendant's application should not have been filed in the High Court.

The defendant's claim is obviously made under s. 3(2) of the said Act. This is clearly evidenced by the affidavit of the defendant (Enclosure 16) filed in support of this application. The heading of her affidavit specifically states, “Under s. 3(2) of the Married Women and Children (Maintenance) Act 1950”.

The “Court” granting such relief under the said Act has been defined under s. 3 of the said Act, as the Subordinate Courts. Therefore, such relief as claimed by the defendant, should in the first instance, be brought in the Subordinate Court. Only when, as provided for under s. 8 of the said Act, that such matters in the opinion of the Subordinate Court, be more conveniently dealt with by the High Court, the matter can be referred to the High Court.

The learned defence Counsel’s reliance on s. 9 of the said Act, to provide the High Court with jurisdiction to hear this application, as a Court of first instance, is a misinterpretation of this particular section of the Act.

Though s. 9 does provide the High Court with powers to determine matters arising from the said Act, its powers only relate to matters referred to it by the Subordinate Courts under s. 8. Section 9 must be read in connection with and, in consequence to s. 8 of the Act and not, on its own to imply that, the High Court can hear such matters in the first instance. Therefore, the Court of first instance for relief sought under the Act must be the Subordinate Court.

Now this Court shall deal with O. 84 r. 3 of the High Court Rules, which the defence Counsel, also relied upon in support of his contention that, the High Court can entertain the defendant's application as a Court of first instance. Rule 3, though provides for applications as to guardianship, maintenance or advancement of infants, which may be disposed of in the chambers of the High Court, such applications are in reference to applications made under the Guardianship of Infant Act 1961. This is so for reason that O. 84 r. 1 clearly defines the ambit of these proceedings in relation to Guardianship of Infants Act 1961. Therefore the

"applications" provided for under r. 3 must be confined to applications made under the Guardianship of Infants Act 1961 and not otherwise. Certainly it has no application to proceedings commenced under the Married Women and Children (Maintenance) Act 1950.

For reasons aforesaid, this Court dismisses the defendant's application with costs.

Also found at [1992] 2 CLJ 812